

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

July 6, 2006

**DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: December 22, 2005

Case Number: TSO-0335

This Decision concerns the eligibility of XXXXXXXXXXXX XXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's request for an access authorization should be granted. As set forth in this Decision, I have determined that the individual should not be granted a security clearance at this time.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

The individual requested a DOE security clearance in connection with his employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on November 10, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j). More specifically, the Notification Letter alleges that the individual has: 1) "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in judgment and reliability [of the individual]"; and, 2) "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. §§ 710.8(h) and (j) (Criterion H and Criterion J, respectively). The bases for these findings are summarized below.

The Notification Letter states on August 1, 2005, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who determined that the individual was an abuser of alcohol habitually to excess. The DOE Psychiatrist further diagnosed the individual as suffering from Substance Abuse, Alcohol (Alcohol Abuse), based upon diagnostic criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on December 22, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On January 5, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, DOE Security called the DOE Psychiatrist as its sole witness. The individual testified on his own behalf, and also called his supervisor, counselor, girlfriend and two close friends. The transcript taken at the hearing will be hereinafter cited as "Tr." Documents that were submitted during this proceeding by DOE Security and the individual constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was hired by a DOE contractor in June 2002. In August 2004, a security clearance was requested for the individual by his employer due to an expected

change in the individual's job responsibilities that required that he have access to classified areas. During the background investigation of the individual, however, DOE Security received derogatory information concerning the individual's use of alcohol. The individual was therefore summoned for a Personnel Security Interview (PSI), conducted on May 10, 2005. The security concerns associated with the individual's use of alcohol were unresolved by the PSI. Accordingly, the individual was referred to the DOE Psychiatrist who reviewed the individual's personnel security file, and then performed a psychiatric interview and evaluation of the individual on August 1, 2005. Following is a summary of the information provided by the individual during the PSI and psychiatric interview regarding his use of alcohol.

The individual first experimented with alcohol at age 13 but did not drink in high school. However, the individual's drinking habits changed dramatically during his sophomore year of college. The individual reported during the PSI that at that time, he fell into a pattern of drinking to the point of intoxication nearly every weekend with his friends. According to the individual, he would typically consume four to five shots of liquor, or a six-pack of beer. This level of alcohol consumption continued during the individual's college years. The individual reduced his drinking in 2000 when he began graduate school, and reportedly drank very little during 2000-2001. The individual stated during the PSI, however, that since gaining employment with the DOE contractor in 2002, he had become intoxicated on an average of 10 times per year. The individual also stated that he had come to work with a hangover on an average of three times per year. In addition, the individual reported that he had driven an automobile while intoxicated on many occasions when in college and maybe two times a year since leaving college, the last instance in December 2004. The individual added further that while he had no intention to drive while impaired by alcohol in the future, he could not rule out it happening again.

The individual gave somewhat discrepant information during his psychiatric interview. The individual informed the DOE Psychiatrist that he got intoxicated two to five times a year from his sophomore year onward in college. In addition, the individual told the DOE Psychiatrist that between May 2004 and May 2005, he had become intoxicated six times with the most recent occurrence in March 2005. The individual admitted to missing work due to having a hangover but denied going to work with a hangover. Regarding drinking and driving, the individual reported to the DOE Psychiatrist that he drove while intoxicated three to four times a year in college, and had driven while impaired on three occasions during the one year period December 2003 to December 2004, with the final occurrence in December 2004.

In his report issued on September 11, 2005, the DOE Psychiatrist diagnosed the individual with Substance Abuse, Alcohol, under *DSM-IV TR* criteria, and further opined that the individual was a user of alcohol habitually to excess at the time of his psychiatric interview. The DOE Psychiatrist further states in his report that the

individual's Alcohol Abuse is an illness or mental condition which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 200 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, at least once a week over a two-year time frame, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare for a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See *Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant

and material factors. After due deliberation, it is my opinion that the individual should not be granted an access authorization since I am unable to conclude that granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Derogatory Information

The DOE Psychiatrist diagnosed the individual with Alcohol Abuse based upon diagnostic criteria set forth in the *DSM-IV TR*. DOE Exh. 7 at 17. The *DSM-IV TR* generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. *See id.* In the case of the individual, the DOE Psychiatrist determined that the individual met the first criterion (Criterion A1) based upon the individual's admission that he missed work due to a hangover or reported to work in a hungover condition, and that the individual met the second criterion (Criterion A2) based upon the individual's admitted incidents of driving while intoxicated. *Id.*; Tr. at 168-69. The DOE Psychiatrist conceded at the hearing that the evidence in support of Criterion A1 was weak. Tr. at 172. However, the DOE Psychiatrist emphasized that the Criterion A2 evidence was strong and satisfying one criterion is sufficient to sustain the diagnosis. *Id.*

I find that the DOE Psychiatrist's diagnosis is supported by the record of this case. At the hearing, the individual acknowledged driving while intoxicated on several occasions during the year preceding his psychiatric interview, most recently in December 2004. Tr. at 141-42. As discussed in the succeeding section of this decision, the individual has begun seeing an alcohol counselor (Counselor). The Counselor shares the opinion of the DOE Psychiatrist and believes that the individual was properly diagnosed with Alcohol Abuse.^{2/} Tr. at 53. I therefore find that DOE Security

^{2/} I note that before seeking treatment with his Counselor, the individual received an alcohol assessment by a therapist at another alcohol treatment facility. In his report dated December 8, 2005, the therapist concludes: "Based on my observations during the intake interview, information provided by [the individual] and the data from the assessment instruments provided, there is no support for a diagnosis of a Substance Abuse Disorder at this time." Ind. Exh. 1 at 2. At the hearing, however, the individual conceded that the assessment performed by the therapist "was kind of superficial." Tr. at 128. The individual's Counselor expressed a similar view, stating that it was unclear whether the therapist had even conducted clinical interview of the individual. Tr. at 53-54. The DOE Psychiatrist testified that the therapist's report did not detract from his diagnosis in any way,

properly invoked Criteria H and J in denying the individual a security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.* Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the concerns of DOE Security.

B. Mitigating Evidence

The individual's session with the DOE Psychiatrist led the individual to more fully recognize the concerns of DOE Security with respect to his drinking, and he made the decision to stop drinking at that time. According to the individual, his last consumption of alcohol was four days prior to the date of his psychiatric interview on August 1, 2005. Tr. at 117. Thus, the individual had eight months of sobriety at the time of the hearing. Tr. at 158. The individual's sobriety date was corroborated by the testimony of his girlfriend who sees the individual on a regular basis. Tr. at 90.

After receiving the report of the DOE Psychiatrist, the individual met with his Employee Assistance Program counselor and explored treatment options, before ultimately deciding to begin treatment with his present Counselor in January 2006. Tr. at 47, 128-30. Under the Counselor's treatment program, the individual meets in group therapy sessions three times a week, primarily focused on alcohol education and awareness. Tr. at 50-51. The Counselor has also met separately with the individual on four to five occasions. Tr. at 51. The individual is subject to periodic urine tests for alcohol and drug screening. Tr. at 59-60. The individual testified that he has benefitted greatly from the Counselor's program, particularly with regard to alcohol awareness. Tr. at 129-31. According to the Counselor, the initial group therapy phase of his treatment program continues for six months and, after successful completion of that phase, the individual will enter into an aftercare phase in which he will come to weekly group therapy sessions. Tr. at 58, 67.

noting: "[T]hose tests, in my opinion, are meaningless, they're paper and pencil tests, or computer tests where you answer questions, and it's very easy to get a false negative." Tr. at 193-94.

The individual's supervisor and friends described the individual as highly disciplined,^{3/} honest, reliable and trustworthy. Tr. at 10, 43, 78. I too found the individual to be forthright and direct in stating his intention to maintain his sobriety, complete his alcohol treatment program and do whatever is necessary to alleviate the concerns of DOE Security. Tr. at 139, 145. With regard to the individual's honesty, I note that the individual has had no alcohol-related incidents, such as arrests for driving while intoxicated, domestic altercations or issues at work. Tr. at 131-32. Instead, it was the individual's candor during the PSI and psychiatric interview that gave rise to the security concerns regarding his use of alcohol.^{4/}

Upon hearing the testimony of the individual, the DOE Psychiatrist commended the individual for his progress in seeking treatment. Tr. at 176. However, the DOE Psychiatrist expressed his opinion that the individual had not yet achieved adequate rehabilitation or reformation, and adhered to the requirements outlined in his report: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 200 hours of attendance at Alcoholics Anonymous (AA), with a sponsor, at least once a week over a two-year time frame, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare for a minimum of six months, or 3) as adequate evidence of reformation, two or three years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not. Tr. at 170-71, 174-76; see DOE Exh. 7 at 18-19.

While the DOE Psychiatrist's requirements appear to be somewhat stringent in the case of the individual, the individual's Counselor also did not believe that the individual had yet achieved adequate rehabilitation or reformation at the time of the hearing. During his testimony, the Counselor stated his opinion that in order to achieve adequate rehabilitation or reformation, the individual must complete his treatment program, including aftercare, and maintain his sobriety for a full year. Tr. at 58, 66-67. At the time of the hearing, the individual had achieved only eight months of sobriety and had completed three months of the six-month initial phase of the Counselor's program. Therefore, under the circumstances of this case, I find that the individual has not yet overcome the security concerns associated with his past use of

^{3/} The individual engages in various athletic competitions that are very demanding physically, including long distance running, cycling and "iron man" competitions, that require substantial discipline in training. See Tr. at 15, 72-72.

^{4/} While there was a discrepancy between some of the information provided by the individual during the PSI and his psychiatric interview, the DOE Psychiatrist testified that "I didn't find the difference meaningful or unusual, the usual differences" and that "I thought [the individual] was very honest." Tr. at 177, 180.

alcohol and diagnosis of Alcohol Abuse. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h) and (j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to mitigate the security concerns associated with his past use of alcohol and diagnosis of Alcohol Abuse. I am therefore unable to find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual should not be granted an access authorization at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: July 6, 2006